Filed 1/15/09 P. v. Hall CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. KOEPPEL HALL, Defendant and Appellant.	B199214 (Los Angeles County Super. Ct. No. BA289736)

APPEAL from a judgment of the Superior Court of Los Angeles County. David S. Wesley, Judge. Affirmed.

William L. McKinney for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Mary Sanchez and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.

The jury convicted Koeppel Hall of nine counts of premeditated, deliberate attempted murder, of shooting at a motor vehicle, of shooting from a motor vehicle, and of being a felon unlawfully in possession of a firearm. The jury found true the allegations that a principal intentionally discharged a firearm causing great bodily injury and that Hall committed all the offenses for the benefit of a criminal street gang. Hall appeals from the judgment claiming (1) insufficient evidence supported the convictions, (2) the court committed instructional error, (3) the prosecutor committed prejudicial misconduct, and (4) trial counsel rendered ineffective assistance. He claims that these errors, either individually or in combination, require reversal of the judgment. We affirm.

BACKGROUND

The criminal street gangs known as the 65 Menlo Crips and the Eight Trey Hoovers are archenemies. At approximately 6:30 p.m. on October 21, 2003 a 65 Menlo Crips gang member, known as "Psycho," was shot. Police believed that the persons responsible for the shooting were Daleisha Gilbert and Kevin Maddox from the rival Eight Trey Hoover gang.

A half hour later, at approximately 7:00 p.m. on October 21, 2003, Vanetda Ward was driving her Chevy Tahoe sports utility vehicle (SUV) containing eight family members. Her ex-husband Louis sat in the front passenger seat. Ward's daughter Alexus and three of Alexus's cousins, Khevionna, Aroya and Jasmine, sat in the row of seats behind the driver. Ward's sons Davion and Eric and their step-brother Louis, Jr., sat in the far rear of the SUV.

Ward stopped the SUV at a stop light at the corner of 76th and Hoover Streets. A moment later a champagne colored Cadillac Escalade SUV with "spinner" rims crossed in front of Ward's vehicle. Davion said "contact," meaning he admired the car, and said, "There go Nee Nee."

Appellant Hall's nickname is "Nee Nee." Ward had had a romantic relationship with Hall for many years. Ward's daughter Alexus had known Hall virtually all her life.

Ward's son Davion considered Hall his godfather because Hall had taken a special interest in Davion's welfare after Davion's father's death. When Ward saw Hall she commented, "What he doing over here? He must got a death wish." The Hoover gang claimed this part of the neighborhood as their territory and Hall was considered an "O.G.," or "original gangster," member of the rival 65 Menlo Crips gang.

The occupants of Ward's car watched as Hall drove through the intersection, made an abrupt U-Turn and turned onto 76th Street in front of them. The back passenger window of Hall's car lowered, and the passenger pointed a handgun out the open window at Ward's car and began firing shots, starting at one side of Ward's SUV, then across its windshield, and along the other side, and finally through the back window as Hall negotiated the turn around Ward's car.

Ward's car was hit multiple times and the windows were shattered. The exterior of Ward's car sustained seven bullet holes and another bullet left a crease along the passenger side. Then seven-year-old Alexus was shot in her shoulder and back and was covered in blood. Ward drove through the intersection to a police patrol car she saw parked in the next block and sought the officers' assistance.

Within moments of the shooting Ward received a cell phone call from Hall. Ward was upset and told Hall repeatedly that Alexus had been shot. Hall apologized, said he was very sorry, and explained to Ward that he did not know it was Ward's SUV. Hall had previously warned Ward that her SUV looked so similar to the SUV rival Eight Trey Hoover gang member Daleisha Gilbert drove that she was in danger of being mistaken for Gilbert and killed. Hall had urged Ward to paint her SUV to distinguish it from Gilbert's.

Hall had apparently failed to disconnect after his call to Ward, and at 7:11 p.m, within minutes of the shooting, he inadvertently left a recording on Ward's cell phone of his conversation with an unidentified male. A recording of this conversation was played for the jury at trial. On the recording Hall admitted, "Man, I just shot up Vanetda's truck with her babies in it, all her babies out here, be thinking it was a 'Hoover' truck." The man questioned Hall, and Hall repeated, "We just shot up Vanetda's truck, thinking it

was a 'Hoover' truck, and her babies were in the motherfucker, man!" Hall identified the location where the shooting occurred, stating, "It's on Hoover, 70-something by the 80's man. God Damn! Put that thing away, man!" In response, Hall's companion commented, "So what? Fuck that bitch."

Ward gave a brief statement to police at the scene and identified Hall as the driver of the car involved in the shooting. At the hospital, Ward gave police officers a more detailed statement and identified the shooter as someone she had known for years as "Dean." Ward later identified Hall as the driver from a photographic line-up, as did her niece Khevionna.

Hall called Ward a few days after the shooting to apologize. Hall said he was very sorry and offered to repair Ward's SUV, to help with her children, to give her money, and to give her whatever else she needed. Ward informed Hall that she, Khevionna, and her daughter Alexus, had already identified him as the driver of the car involved in the shooting. A few days later Ward and Hall again spoke on the phone and discussed the possibility of Ward recanting her identification and the likelihood of getting Khevionna and Alexus to retract their identification of him as well. This time Ward recorded their telephone conversation, and the recording was played for the jury at trial. During the conversation, Ward and Hall agreed to say his SUV had tinted windows and that no one could see its occupants. Ward had not yet talked to Khevionna but agreed to try to get Alexus to say she was unsure of the driver's identity. Ward said, "I know you probably want to send [defense counsel] back out cuz I'm getting Alexus pretty much on, she really now saying that um, she was like 'I don't know mommy, people do got trucks you know, a lot of people got, you know, the same kind of truck huh?' I was like, 'Yup.' She was like, 'So that wasn't Ne Ne huh?' I was like 'Nope.' And then she was like, 'Okay.' And I said, 'Well, we probably have to remember that man you was talking to? Remember you kept telling that man that you know, that you said it was Ne Ne?' I was like, 'You need to, um, you're not sure now right?' She was like, 'Right.' So when you talk to [defense counsel], let him know that he can come back and talk to Alexus again cuz she ain't, she saying that it wasn't you now." In response, Hall said, "just keep

drilling her head. . . . [O]nce you get Khevionna down—you know what I'm saying, I'll turn myself in."

At trial, Ward explained that she had considered recanting her identification of Hall as the driver both because she had had such a good relationship with him for so many years and because she was afraid that "if we told on him, we was going to get killed and lose our life." Nonetheless, even after the shooting Ward still had strong feelings for Hall and continued her romantic relationship with him.

In December 2003 Hall told Ward he planned to paint his SUV red. Ward relayed this information to law enforcement personnel who found and impounded Hall's SUV. They discovered the SUV had recently been painted red.

On January 30, 2004, police officers detained two acknowledged 65 Menlo Crips gang members. In a search of their vehicle, the officers found a fully-loaded Colt .45 caliber handgun which held eight rounds of ammunition. Through ballistics testing of the firearm and comparison of those shell casings with the five shell casings found at the shooting scene at 76th and Hoover streets, officers believed this was the gun used to shoot at Ward's car. Police arrested Hall in December 2004.

An information charged Hall with (1) nine counts of attempted willful, deliberate and premeditated murder (Pen. Code, §§ 664/187, subd. (a)),[1] (2) one count of shooting at an occupied vehicle (§ 246), and (3) one count of shooting from a motor vehicle (§ 12034, subd. (d)). As to these counts the information alleged a principal personally and intentionally discharged a firearm causing great bodily injury (§ 12022.53, subds. (b), (c), (d) and (e)(1)). The information also charged Hall with being a felon unlawfully in possession of a firearm (§ 12021, subd. (a)(1)). As to all counts the information alleged that Hall had suffered a prior "strike" conviction (§ 1170.12, subds. (a) - (d), § 667, subds. (b) – (i)) and that all offenses had been committed for the benefit of, at the direction of, and in association with a criminal street gang. (§ 186.22, subd. (b)(1)(A).) The jury convicted Hall as charged and found true all allegations. The court sentenced

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[1] Further unmarked statutory references are to the Penal Code.

Hall to an aggregate term of 60 years to life in state prison and imposed related fines and fees. Hall appeals from the judgment of conviction.

DISCUSSION

SUFFICIENCY OF THE EVIDENCE

Ward's Credibility

Hall contends his convictions were largely based on Ward's testimony which, he argues, cannot be credited, both because she was biased and because she was a convicted felon with a proven track record of lying and perjury.

Hall points out that Ward admitted she was a convicted felon, with convictions for (1) perjury, (2) unlawful use of personal identification, (3) making a false financial statement, (4) grand theft, and (5) burglary.

Hall asserts Ward's duplicity and bias further destroyed her credibility. The evidence showed that in 2001 when Ward realized she risked prison for her theft-related offenses, she contacted the Federal Bureau of Investigation (FBI) and offered to become an FBI informant in exchange for assistance on her then pending criminal cases. With the FBI's assistance Ward received probation and a six-year suspended sentence on her California convictions (as well as probation on another criminal matter in Nevada).

Starting in 2001 Ward became an undercover informant for the FBI and supplied the agency with information concerning drug operations and gun dealings by the gangs in her neighborhood. Ward apparently supplied the FBI useful information, was successful at making controlled drug buys, and at some point her status changed to being a paid informant. Over the years, Ward received between $30,000 to $40,000 from the FBI, either in cash or in prepaid relocation expenses.

Hall also asserts the evidence showed that Ward had been willing to adjust her testimony in this case by retracting her identification of him as the driver. All these instances of misconduct and bias, Hall argues, so negatively impacted Ward's credibility that no substantial evidence supports his convictions. We disagree.

"In reviewing a sufficiency of evidence claim, the reviewing court's role is a limited one. '"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]"' [Citations.]

"'"Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]" [Citations.]'" (*People v. Smith* (2005) 37 Cal.4th 733, 738-739.)

Even if the jury entirely discounted Ward's testimony as incredible or unreliable, the record nevertheless contains other strong evidence supporting the convictions. Alexus, Khevionna and Davion, all passengers in Ward's car, also witnessed the shooting. Each testified that they saw Hall's champagne colored Cadillac SUV with its distinctive "spinning" rims. The evidence showed that the windows of Hall's SUV were not tinted and that there were multiple working streetlights at the intersection of 76th and Hoover Streets sufficient to allow good visibility inside Hall's SUV. Each witness testified that he or she saw Hall driving the SUV. Their identification of Hall as the driver was particularly compelling because each was well acquainted with Hall and had seen his vehicle numerous times before the shooting. Their testimony alone was more than sufficient to sustain the convictions. (Compare CALJIC No. 2.27 [the testimony of a single witness is sufficient for proof of a fact].)[2]

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[2] Only Ward, and no other witness, identified Hall's codefendant as the shooter. The jury acquitted the codefendant of all charges.

In addition, Hall himself admitted to being involved in the shooting during the conversation recorded on Ward's cell phone.

In short, substantial evidence supports the convictions even if the jury chose to disregard Ward's testimony entirely.

"Kill Zone" Instruction

As an independent ground for reversal, Hall contends that all but one of his attempted murder convictions must be reversed because, at most, the evidence showed only that he intended to kill the driver of the car who he believed was Daleisha Gilbert of the rival Eight Trey Hoover Crips gang. For this reason, he claims the instruction regarding a "kill zone," which permitted attempted murder convictions for anyone within the zone of danger, was inapplicable and the court erred in instructing the jury on this theory. We disagree.

The court instructed the jury with CALJIC No. 8.66.1, which informed the jury evidence showing that a defendant primarily intended to kill a particular person might also support an intent to kill all others within that "zone of risk" as well, depending on the nature and scope of the attack on the targeted victim.[3] Based on the factual circumstances of this case the court was correct in giving this instruction. The evidence showed that Hall planned a retaliatory killing of primary target Daleisha Gilbert for the drive-by shooting he believed she had committed on 65 Menlo Crips member "Psycho" a half hour earlier. Hall saw the SUV resembling Gilbert's SUV with a female driver and believed it was Gilbert's "Hoover truck."

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[3] CALJIC No. 8.66.1 stated: "A person who primarily intends to kill one person, may also concurrently intend to kill other persons within a particular zone of risk. This zone of risk is termed the 'kill zone.' The intent is concurrent when the nature and scope of the attack, while directed at a primary victim, are such that it is reasonable to infer the perpetrator intended to kill the primary victim by killing everyone in that victim's vicinity.

"Whether a perpetrator actually intended to kill the victim, either as a primary target or as someone within a 'kill zone' zone of risk is an issue to be decided by you."

Hall's argument that he only intended to kill the driver would be more compelling if the shooter had aimed and fired his weapon solely at the driver. He did not. Instead, because Ward's SUV was mistaken for a "Hoover truck," the shooter sprayed bullets into the car along one side, across its windshield, down the other side and into the rear window, making it evident Hall and the shooter intended to, and wanted to, kill any person who happened to be in the SUV—not only the driver. (*People v. Bland* (2002) 28 Cal.4th 313, 330 ["'When the defendant escalated his mode of attack from a single bullet aimed at A's head to a hail of bullets or an explosive device, the factfinder can infer that, whether or not the defendant succeeded in killing A, the defendant concurrently intended to kill everyone in A's immediate vicinity to ensure A's death.'"].)

Given that Hall maneuvered his car to allow the shooter to fire at multiple parts of the car and that the shooter fired all eight bullets of the Colt .45 caliber handgun into the car, the jury could reasonably infer that Hall concurrently intended to kill everyone in the vehicle. (See *People v. Bland, supra*, 28 Cal.4th at p. 330, quoting, *People v. Vang* (2001) 87 Cal.App.4th 554, 563-564 ["'The fact they could not see all of their victims did not somehow negate their express malice or intent to kill as to those victims who were present and in harm's way, but fortuitously were not killed.'"].)

PROSECUTORIAL MISCONDUCT

Before trial, Ward met with the defense investigator and a videographer at the intersection of 76th and Hoover Streets to reenact the shooting. Unbeknownst to the defense team, Ward was wearing a recording device provided by the FBI which recorded the parties' conversations during the taping of the videos. Apparently, and despite various attempts by the defense investigator to influence Ward's version of the events (purportedly at defense counsel's suggestion), Ward consistently identified Hall as the driver of the car involved in the shooting.

The prosecutor did not secure a pretrial ruling on the admissibility of this evidence. Further, prior to opening statements, as recorded in a sealed portion of the record made outside the presence of defense counsel and the jury, the prosecutor implied

to the court that he would raise the alleged subornation only if necessary to rehabilitate Ward. Nevertheless, in his opening statement the prosecutor said he would present evidence of the defense team's efforts to, in essence, suborn perjury. The prosecutor stated, "You're going to hear that pretty much every window in this truck was shot up. There are multiple bullet impacts outside and inside of this car. And luckily, really, only one of these children was hit, but she survived so that she can tell you about her observations and the person who she saw driving that Escalade truck, but she's not the only one. You're going to hear from a variety of people who were in that car who saw the same thing, Koeppel Hall driving that Escalade.

"Now, this case is about more than just these counts of attempted murder that have been filed against the perpetrators of this shooting. Because you're also going to hear about the immediate attempts to subvert justice on the part of Mr. Hall and his representatives, including representatives from the defense team.

"You're going to hear about how within moments of this shooting, Koeppel Hall got on the phone, realizing what he had done, he called Ms. Ward multiple times, maybe 10 times, 12 times, in a matter of minutes, trying to get her not to call the police, telling her it was an accident, telling her not to cooperate, and this continued in the days that followed.

"[Ward] was contacted by fellow gang members who threatened her. She was even visited by the defense attorney, [], his investigator, whom she told the truth to, that she saw Mr. Hall driving that car, and yet there were attempts made to get her to change her story, to lie to the police in order to protect Koeppel Hall. [¶] These attempts continued over a period of weeks, over a period of months. Even after Mr. Hall was arrested, she received calls from jail, telling her not to testify. She's told what happens to snitches, which you'll hear about in this case. And yet against all of those odds, she's here to testify and to tell you exactly what happened."

Hall asserts that the prosecutor's argument constituted misconduct because the prosecutor deliberately referred to defense attempts to subvert justice, evidence which the trial court ultimately ruled was inadmissible under section 352 as more prejudicial than

probative. In addition, Hall argues, the prosecutor's attack on defense counsel's and his defense team's ethics and character rendered his trial fundamentally unfair, amounted to a denial of due process, and constituted reversible error. We disagree.

A prosecutor's argument impugning defense counsel's character, or accusing defense counsel of suborning perjury, can, in certain cases, amount to prejudicial prosecutorial misconduct. For example, in *People v. Herring* (1993) 20 Cal.App.4th 1066 reversal was required where the prosecutor argued, "'[m]y people are victims. His people are rapists, murderers, robbers, child molesters. He has to tell them what to say. He has to help them plan a defense. He does not want you to hear the truth. . . ." (*Id.* at p. 1075.)

Hall did not, however, object to the prosecutor's argument as misconduct nor request the trial court to admonish the jury. As a general rule, a defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant requested an assignment of misconduct and also requested that the jury be admonished to disregard the impropriety. If counsel failed to object, the point is reviewable only if an admonition would not have cured the harm caused by the misconduct. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1000-1001.)

Even assuming that Hall has not forfeited the issue for review by failing to object, and further assuming that the prosecutor's comments impugning the defense were improper, any prosecutorial misconduct was harmless. (*People v. Herring, supra,* 20 Cal.App.4th at p. 1074 [where prosecutorial misconduct violates a defendant's right to counsel reversal is required unless a court is convinced beyond a reasonable doubt the prosecutorial misconduct was harmless].) The jury was instructed that an opening statement by counsel was not evidence but simply an outline by counsel of what counsel believed or expected the evidence would show at trial. (*People v. Cunningham, supra,* 25 Cal.4th at p. 1002 [prosecutor's inaccurate assertions in opening statement were harmless because the jury was instructed that the opening statement was not evidence]; *People v. Valdez* (2004) 32 Cal.4th 73, 134 [any possible prejudice was mitigated by the court's instruction to the jury that statements made by counsel during trial are not evidence].)

Because the jury had been advised that the prosecutor's statements were not evidence, Hall has not demonstrated that, assuming misconduct, an admonition to the jury to disregard the statements would have been an ineffective remedy. (*People v. Wrest* (1992) 3 Cal.4th 1088, 1108 [admonition to the jury could have cured any perceived harm from the prosecutor's alleged misstatements of the evidence in opening statement].)

In addition, Hall had an opportunity to confront all witnesses and to rebut all evidence offered against him which further mitigated the harm.[4] (*People v. Wrest*, *supra*, 3 Cal.4th at pp. 1109-1110.) Hall also had the opportunity to, and did, rebut the prosecutor's statements in his own opening statement by explaining that defense efforts were not an attempt to subvert justice but an attempt to ferret out the truth from an unreliable witness who had questionable motives. Defense counsel told the jury: "The evidence will show that contact was made with Ms. [Ward] by my office and an appointment was set up to discuss this case in my representation of Mr. Hall, and that our understanding was she wanted to recant, and she was going to say that she made a mistake in identifying Mr. Hall in this case, and that my investigator and I went to her home to talk to her and the children.

"And Alexus, [Ward's] child, when asked did [defense counsel] tell you what to say, she will tell you no. Vanetda Ward will admit that she told us that she was confused, and she may have made a mistake, yeah, I identified Koeppel, but I made a mistake, so what [are] you [] going to do as an investigator, okay, let's go out to the scene and you tell us what happened, and the evidence will show that my investigator went with Ms. Ward to the scene in February, several months later, and Ms. Ward would go through a reenactment and say 'I forgot, oh, I'm supposed to say this, I'm supposed to say that.' [¶]

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[4] Hall suggests that the prosecutor's statements may have deprived him of the right of confrontation. But this argument is without merit because the prosecutor only made a general reference to "attempts" by Hall and his "defense team" "to subvert justice," and introduced no statements made by any person unavailable for questioning at trial. (See *Donnelly v. DeChristoforo* (1974) 416 U.S. 637, 643, fn. 15 [rejecting claim of Confrontation Clause violation where the prosecutor only stated his own opinions and did not introduce any actual statements from any person unavailable to testify at trial].)

All the time now we see an attempt to get my investigator to tell her what to do so that she could get another bust and maybe get another $9,999 [from the FBI]." These statements from defense counsel countered the prosecutor's accusations and provided a neutral explanation for the prosecutor's assertions that the defense team had improperly attempted to influence Ward's testimony.

Finally, the prosecutor's comments related to the issue of guilt, an issue on which overwhelming independent evidence supported the verdicts. Ward and three other witnesses positively identified Hall as the driver of the SUV from which the shots were fired. Also, within minutes of the shooting, Hall's admission was recorded on Ward's cell phone. On the recording, Hall stated he had "just shot up Vanetda's truck with her babies in it . . . thinking it was a 'Hoover' truck." Thus, on this record, even assuming misconduct, Hall was not prejudiced because there was no reasonable possibility that the prosecutor's comments improperly influenced the jury's verdicts. (*People v. Cunningham, supra*, 25 Cal.4th at p. 1019.)

INEFFECTIVE ASSISTANCE OF COUNSEL

Hall claims defense counsel rendered ineffective assistance by failing (1) to secure a pretrial ruling that the probative value of the evidence concerning the defense investigator's videos of Ward was substantially outweighed by its prejudicial effect and thus inadmissible, (2) to object to the prosecutor's objectionable comments in opening statement, (3) to move for a mistrial after the prosecutor referred to the defense team's attempts to subvert justice, and (4) to avoid a conflict of interest by choosing to defend his reputation in opening statement over his client's interest in receiving a fair trial by a jury unexposed to the prosecutor's accusations of improper and possibly criminal conduct by the defense. Hall asserts the cumulative effect of counsel's unprofessional errors requires reversal of the judgment. We disagree.

Hall's claim that counsel rendered ineffective assistance by failing to move for mistrial fails. Although prosecutorial misconduct may well constitute an appropriate basis for a mistrial motion (see *People v. Wharton* (1991) 53 Cal.3d 522, 565), such a

motion should be granted "only when a party's chances of receiving a fair trial have been irreparably damaged." (*People v. Ayala* (2000) 23 Cal.4th 225, 283.) "Irreparable damage" occurs whenever prosecutorial misconduct is judged to be "'incurable by admonition or instruction. [Citation.]'" (*People v. Wharton, supra,* 53 Cal.3d at p. 565.)

Assuming, as we have earlier, that the opening statement constituted misconduct, any harm it might have caused was curable. Once informed of the nature of the evidence, the trial court could have (1) told the jury they would not hear any evidence of any alleged attempt by the defense team to dissuade witnesses, (2) instructed the jury to disregard the prosecutor's comments, and (3) repeated its instruction to the jury that an opening statement by counsel is not evidence, but simply a outline of what counsel thinks the evidence will show. These instructions, in combination, could have neutralized any potential harm from the prosecutor's accusations. (Compare *People v. Hines* (1964) 61 Cal.2d 164, 169 [in assessing prejudice courts determine whether other evidence before the jury neutralized the impact of the error].) Hall has thus failed to show the prosecutor's statements accusing the defense team of attempting to subvert justice caused "irreparable damage" warranting a mistrial. Accordingly, Hall can show no prejudice from counsel's alleged ineffectiveness for failing to move for mistrial based on the prosecutor's alleged misconduct.

Likewise, Hall's other claims of ineffective assistance of counsel fail because he cannot establish the requisite element of prejudice. A defendant asserting a claim of ineffective assistance of counsel must show both that his trial counsel's performance fell below an objective standard of reasonableness and that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 693-694; *People v. Ledesma* (1987) 43 Cal.3d 171, 216-218.)

As stated earlier, the evidence of Hall's guilt was overwhelming and, for this reason, he cannot show that the result of the trial would have been different in the absence of counsel's claimed errors. (*Strickland v. Washington, supra,* 466 U.S. at pp. 687-688, 693-694; *People v. Ledesma, supra,* 43 Cal.3d at pp. 216-218.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

BAUER, J.*

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.